

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ENFENDIEU BULTUMER,)
 Petitioner,)
 v.) C.A. No. 04-10138-REK
 INS,)
 Respondent.)

ENFENDIEU BULTUMER,)
 Petitioner,)
 v.) C.A. No. 03-12561-REK
 ANDREA J. CABRAL, SHERIFF,)
 Respondent.)

MEMORANDUM AND ORDER

For the reasons stated below, (1) the documents filed in C.A. No. 04-10138-REK shall be filed in C.A. No. 03-12561; (2) the Clerk shall close C.A. No. 03-10138-REK; (3) petitioner's Application to Proceed Without Prepayment of Fees is Granted; and (4) the Clerk shall serve the petition.

DISCUSSION

On December 5, 2003, Enfendieu Bultumer, an immigration detainee now confined to the Suffolk County House of Correction, filed a letter accompanied by several documents concerning his 1997 conviction for possession of cocaine, G.L. ch. 94C, § 34 in Brockton District Court. Mr. Bultumer's letter asks this Court to (1) appoint counsel to represent him and (2) vacate his state court conviction. Mr. Bultumer explains that on September 10, 2003 his counseled motion for a

verdict of not guilty was denied. Such motion was based, in part, on the fact that the trial record failed to include the actual substance allegedly seized from Mr. Bultumer or a certificate of analysis concerning such substance.

By Order dated December 12, 2003, petitioner was granted additional time to file a Section 2254 petition accompanied by either the \$5.00 filing fee or an Application to Proceed Without Prepayment of Fees.

On January 16, 2004, the Court received an Application to Proceed Without Prepayment of Fees (Docket No. 1), accompanied by an Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Docket No. 2) seeking to challenge petitioner's 1997 Massachusetts conviction. Although the documents each listed case number 03-12561-REK, the Clerk opened these filings as a new action, Bultumer v. INS, C.A. No. 04-10138-REK.

Because it appears that C.A. No. 04-10138-REK was incorrectly opened as a new action, the Clerk will be directed to file the documents in C.A. No. 03-12561-REK and close C.A. No. 04-10138-REK. Petitioner's Application to Proceed Without Prepayment of Fees is granted and the Clerk will be directed to serve the petition.

ORDER

ACCORDINGLY, for the reasons stated above,

(1) The Clerk shall docket the petition and Application to Proceed Without Prepayment of Fees in C.A. No. 03-12561-REK.

(2) The Clerk shall close C.A. No. 04-10138-REK.

(3) The Application to Proceed Without Prepayment of Fees is Granted.

(4) The Clerk shall serve a copy of this Memorandum and Order and the habeas petition by mailing copies, certified mail, to Sheriff Andrea J. Cabral, Suffolk County House of Correction, 20 Bradston Street, Boston, MA 02118; AND the Attorney General for the Commonwealth of Massachusetts, Attention: William J. Meade, Chief, Appellate Division, One Ashburton Place, 18th Floor, Boston, MA 02108-1598.

(5) The Respondent shall, within 20 days of receipt of this Memorandum and Order, file an answer (or other proper responsive pleading) to the Petition for Writ of Habeas Corpus. This Court further requests the Respondent, as part of the return, to file such documents which reflect on the issue as to whether petitioner has exhausted his state court remedies.

SO ORDERED.

Dated at Boston, Massachusetts, this 17th day of February, 2004.

_____/s/ Robert E. Keeton

ROBERT E. KEETON
UNITED STATES SENIOR DISTRICT JUDGE